

E2SSB 6267 - H COMM AMD

By Committee on General Government Appropriations

Strike everything after the enacting clause and insert the following:

NEW SECTION. **Sec. 1.** Water is an essential element for economic prosperity and it generates new, family-wage jobs and state revenues. It is the intent of the legislature to provide both water right applicants and the department of ecology with the necessary tools to expedite the processing of water right applications depending on the needs of the project and agency workload.

NEW __ SECTION. **Sec. 2.** Sufficient resources to support the department of ecology's water resource program are essential for effective and sustainable water management that provides certainty to processed applications. The department of ecology shall review current water resource functions and report to the legislature and the governor by September 1, 2010, on improvements to make the program more self-sustaining and efficient.

Sec. 3. RCW 90.03.265 and 2003 c 70 s 6 are each amended to read as follows:

(1)(a) Any applicant for a new withdrawal or a change, transfer, or amendment of a water right pending before the department(~~((τ))~~) may initiate a cost-reimbursement agreement with the department to provide expedited review of the application. A cost-reimbursement agreement may (~~((only))~~) be initiated under this section if the applicant agrees to pay for, or as part of a cooperative effort agrees to pay for, the cost of processing his or her application and all other applications from the same source of supply which must be acted upon before the applicant's request because they were filed prior to the date of when the applicant filed.

1 (b) The requirement to pay for the cost of other applications under
2 (a) of this subsection does not apply to an application for a new
3 appropriation that would not diminish the water available to earlier
4 pending applicants for new appropriations from the same source of
5 supply.

6 (c) The requirement to pay for the cost of processing other
7 applications under (a) of this subsection does not apply to an
8 application for a change, transfer, or other amendment that would not
9 diminish the water available to earlier pending applicants for changes
10 or transfers from the same source of supply.

11 (d) In determining whether an application would not diminish the
12 water available to earlier pending applicants, the department shall
13 consider any water impoundment or other water resource management
14 mitigation technique proposed by the applicant under RCW 90.03.255 or
15 90.44.055.

16 (e) The department may enter into cost-reimbursement agreements
17 provided resources are available and shall use the process established
18 under RCW 43.21A.690 for entering into cost-reimbursement agreements.
19 The department's share of work related to a cost-reimbursement
20 application, such as final certificate approval, must be prioritized
21 within the framework of other water right processing needs and as
22 determined by agency rule.

23 (f) Each individual applicant is responsible for his or her own
24 appeal costs that may result from a water right decision made by the
25 department. In the event that the department's approval of an
26 application is appealed under chapter 43.21B RCW by a third party, the
27 applicant for the water right in question must reimburse the department
28 for the cost of defending the decision before the pollution control
29 hearings board unless otherwise agreed to by the applicant and the
30 department. If an applicant appeals either an approval or a denial by
31 the department, the applicant is responsible only for its own appeal
32 costs.

33 (2) In pursuing a cost-reimbursement project, the department must
34 determine the source of water proposed to be diverted or withdrawn
35 from, including the boundaries of the area that delimits the source.
36 The department must determine if any other water right permit
37 applications are pending from the same source. A water source may
38 include surface water only, groundwater only, or surface and

1 groundwater together if the department finds they are hydraulically
2 connected. The department shall consider technical information
3 submitted by the applicant in making its determinations under this
4 subsection. The department may recover from a cost-reimbursement
5 applicant its own costs in making the same source determination under
6 this subsection.

7 (3) Upon request of the applicant seeking cost-reimbursement
8 processing, the department may elect to initiate a coordinated cost-
9 reimbursement process. To initiate this process, the department must
10 notify in writing all persons who have pending applications on file for
11 a new appropriation, change, transfer, or amendment of a water right
12 from that water source. A water source may include surface water only,
13 groundwater only, or surface and groundwater together if the department
14 determines that they are hydraulically connected. The notice must be
15 posted on the department's web site and published in a newspaper of
16 general circulation in the area where affected properties are located.
17 The notice must also be made individually by way of mail to:

18 (a) Inform those applicants that cost-reimbursement processing of
19 applications within the described water source is being initiated;

20 (b) Provide to individual applicants the criteria under which the
21 applications will be examined and determined;

22 (c) Provide to individual applicants the estimated cost for having
23 an application processed on a cost-reimbursement basis;

24 (d) Provide an estimate of how long the cost-reimbursement process
25 will take before an application is approved or denied; and

26 (e) Provide at least sixty days for the applicants to respond in
27 writing regarding the applicant's decision to participate in the cost-
28 reimbursement process.

29 (4) The applicant initiating the cost-reimbursement request must
30 pay for the cost of the determination under subsections (2) and (3) of
31 this section and other costs necessary for the initial phase of cost-
32 reimbursement processing. The cost for each applicant for conducting
33 processing under a coordinated cost-reimbursement agreement must be
34 based primarily on the proportionate quantity of water requested by
35 each applicant. The cost may be adjusted if it appears that an
36 application will require a disproportionately greater amount of time
37 and effort to process due to its complexity.

1 (5)(a) Only the department may approve or deny a water right
2 application processed under this section, and such a final decision
3 remains solely the responsibility and function of the department. The
4 department retains full authority to amend, refuse, or approve any work
5 product provided by any consultant under this section. The department
6 may recover its costs related to: (i) The review of a contractor to
7 ensure that no conflict of interest exists; (ii) the management of
8 consultant contracts and cost-reimbursement agreements; and (iii) the
9 review of work products provided by participating consultants.

10 (b) For any cost-reimbursement process initiated under subsection
11 (1) of this section, the applicant may, after consulting with the
12 department, select a prequalified consultant listed by the department
13 under subsection (7) of this section or may be assigned such a
14 prequalified consultant by the department.

15 (c) For any coordinated cost-reimbursement process initiated under
16 subsection (2) of this section, the applicant may, after consulting
17 with the department, select a prequalified consultant listed by the
18 department under subsection (7) of this section or may be assigned a
19 prequalified consultant by the department.

20 (d) In lieu of having one or more of the work products performed by
21 a prequalified consultant listed under subsection (7) of this section,
22 the department may, at its discretion, recognize specific work
23 completed by an applicant or an applicant's consultant prior to the
24 initiation of cost-reimbursement processing. The department may also,
25 at its discretion, authorize the use of such a consultant to perform a
26 specific scope of the work performed by prequalified consultants listed
27 under subsection (7) of this section.

28 (e) At any point during the cost-reimbursement process, the
29 department may request or accept technical information, data, and
30 analysis from the applicant or the applicant's consultant to support
31 the cost-reimbursement process or the department's decision on the
32 application.

33 (6) The department is authorized to adopt rules or guidance
34 providing minimum qualifications and standards for any consultant's
35 submission of work products under this section, including standards for
36 submission of technical information, scientific analysis, work product
37 documentation, and report presentation that such a consultant must
38 meet.

1 (7) The department must provide notice to potential consultants of
2 the opportunity to be considered for inclusion on the list of cost-
3 reimbursement consultants to whom work assignments will be made. The
4 department must competitively select an appropriate number of
5 consultants who are qualified by training and experience to investigate
6 and make recommendations on the disposition of water right
7 applications. The prequalified consultant list must be renewed at
8 least every six years, though the department may add qualified cost-
9 reimbursement consultants to the list at any time. The department must
10 enter a master contract with each consultant selected and thereafter
11 make work assignments based on availability and qualifications.

12 (8) The department may remove any consultant from the consultant
13 list for poor performance, malfeasance, or excessive complaints from
14 cost-reimbursement participants. The department may interview any
15 cost-reimbursement consultant to determine whether the person is
16 qualified for this work, and must spot-check the work of consultants to
17 ensure that the public is being competently served.

18 (9) When a prequalified cost-reimbursement consultant from the
19 department's list described in subsection (7) of this section is
20 assigned or selected to investigate an application or set of
21 applications, the consultant must document its findings and recommended
22 disposition in the form of written draft technical reports and
23 preliminary draft reports of examination. Within two weeks of the
24 department receiving draft technical reports and preliminary draft
25 reports of examination, the department shall provide the applicant such
26 documents for review and comment prior to their completion by the
27 consultant. The department shall consider such comments by the
28 applicant prior to the department's issuance of a draft report of
29 examination. The department may modify the preliminary draft reports
30 of examination submitted by the consultant. The department's decision
31 on a permit application is final unless it is appealed to the pollution
32 control hearings board under chapter 43.21B RCW.

33 (10) If an applicant elects not to participate in a cost-
34 reimbursement process, the application remains on file with the
35 department, retains its priority date, and may be processed in the
36 future under regular processing, expedited processing, coordinated
37 cost-reimbursement processing, cost-reimbursement processing, or

1 through conservancy board processing as authorized under chapter 90.80
2 RCW.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.03 RCW
4 to read as follows:

5 The water rights processing account is created in the state
6 treasury. All receipts from the fees collected under sections 5, 7,
7 and 12 of this act must be deposited into the account. Money in the
8 account may be spent only after appropriation. Expenditures from the
9 account may only be used to support the processing of water right
10 applications for a new appropriation, change, transfer, or amendment of
11 a water right as provided in this chapter and chapters 90.42 and 90.44
12 RCW or for the examination, certification, and renewal of certification
13 of water right examiners as provided in section 7 of this act.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.03 RCW
15 to read as follows:

16 (1) The department may expedite processing of applications within
17 the same source of water on its own volition when there is interest
18 from a sufficient number of applicants or upon receipt of written
19 requests from at least ten percent of the applicants within the same
20 source of water.

21 (2) If the conditions of subsection (1) of this section have been
22 met and the department determines that the public interest is best
23 served by expediting applications within a water source, the department
24 must notify in writing all persons who have pending applications on
25 file for a new appropriation, change, transfer, or amendment of a water
26 right from that water source. A water source may include surface water
27 only, groundwater only, or surface and groundwater together if the
28 department determines that they are hydraulically connected. The
29 notice must be posted on the department's web site and published in a
30 newspaper of general circulation in the area where affected properties
31 are located. The notice must also be made individually by way of mail
32 to:

33 (a) Inform those applicants that expedited processing of
34 applications within the described water source is being initiated;

35 (b) Provide to individual applicants the criteria under which the
36 applications will be examined and determined;

1 (c) Provide to individual applicants the estimated cost for having
2 an application processed on an expedited basis;

3 (d) Provide an estimate of how long the expedited process will take
4 before an application is approved or denied; and

5 (e) Provide at least sixty days for the applicants to respond in
6 writing regarding the applicant's decision to participate in the
7 expedited processing of their applications.

8 (3) In addition to the application fees provided in RCW 90.03.470,
9 the department must recover the full cost of processing all the
10 applications from applicants who elect to participate within the water
11 source through expedited processing fees. The department must
12 calculate an expedited processing fee based primarily on the
13 proportionate quantity of water requested by each applicant and may
14 adjust the fee if it appears that the application will require a
15 disproportionately greater amount of time and effort to process due to
16 its complexity. Any application fees that were paid by the applicant
17 under RCW 90.03.470 must be credited against the applicant's share of
18 the cost of processing applications under the provisions of this
19 section.

20 (4) The expedited processing fee must be collected by the
21 department prior to the expedited processing of an application.
22 Revenue collected from these fees must be deposited into the water
23 rights processing account created in section 4 of this act. An
24 applicant who has stated in writing that he or she wants his or her
25 application processed using the expedited procedures in this section
26 must transmit the processing fee within sixty days of the written
27 request. Failure to do so will result in the applicant not being
28 included in expedited processing for that water source.

29 (5) If an applicant elects not to participate in expedited
30 processing, the application remains on file with the department, the
31 applicant retains his or her priority date, and the application may be
32 processed through regular processing, expedited processing, coordinated
33 cost-reimbursement processing, cost-reimbursement processing, or
34 through conservancy board processing as authorized under chapter 90.80
35 RCW. Such an application may not be processed through expedited
36 processing within twelve months after the department's issuance of
37 decisions on participating applications at the conclusion of expedited
38 processing unless the applicant agrees to pay the full proportionate

1 share that would otherwise have been paid during such processing. Any
2 proceeds collected from an applicant under this delayed entry into
3 expedited processing shall be used to reimburse the other applicants
4 who participated in the previous expedited processing of applications,
5 provided sufficient proceeds remain to fully cover the department's
6 cost of processing the delayed entry application and the department's
7 estimated administrative costs to reimburse the previously expedited
8 applicants.

9 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.03 RCW
10 to read as follows:

11 The department must post notice on its web site and provide
12 electronic notice and opportunity for comment to affected federally
13 recognized tribal governments concurrently when providing notice to
14 applicants under RCW 90.03.265 and sections 5 and 12 of this act.

15 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.03 RCW
16 to read as follows:

17 (1) The department shall establish and maintain a list of certified
18 water right examiners. Certified water right examiners on the list are
19 eligible to perform final proof examinations of permitted water uses
20 leading to the issuance of a water right certificate under RCW
21 90.03.330. The list must be updated annually and must be made
22 available to the public through written and electronic media.

23 (2) In order to qualify, an individual must be registered in
24 Washington as a professional engineer, professional land surveyor, or
25 registered hydrogeologist, or an individual must demonstrate at least
26 five years of applicable experience to the department, or be a board
27 member of a water conservancy board. Qualified individuals must also
28 pass a written examination prior to being certified by the department.
29 Such an examination must be administered by either the department or an
30 entity formally approved by the department. Each certified water right
31 examiner must demonstrate knowledge and competency regarding:

- 32 (a) Water law in the state of Washington;
33 (b) Measurement of the flow of water through open channels and
34 enclosed pipes;
35 (c) Water use and water level reporting;
36 (d) Estimation of the capacity of reservoirs and ponds;

1 (e) Irrigation crop water requirements;
2 (f) Aerial photo interpretation;
3 (g) Legal descriptions of land parcels;
4 (h) Location of land and water infrastructure through the use of
5 maps and global positioning;
6 (i) Proper construction and sealing of well bores; and
7 (j) Other topics related to the preparation and certification of
8 water rights in Washington state.

9 (3) Except as provided in subsection (9) of this section, upon
10 completion of a water appropriation and putting water to beneficial
11 use, in order to receive a final water right certificate, the permit
12 holder must secure the services of a certified water right examiner who
13 has been tested and certified by the department. The examiner shall
14 carry out a final examination of the project to verify its completion
15 and to determine and document for the permit holder and the department
16 the amount of water that has been appropriated for beneficial use, the
17 location of diversion or withdrawal and conveyance facilities, and the
18 actual place of use. The examiner shall take measurements or make
19 estimates of the maximum diversion or withdrawal, the capacity of water
20 storage facilities, the acreage irrigated, the type and number of
21 residences served, the type and number of stock watered, and other
22 information relevant to making a final determination of the amount of
23 water beneficially used. The examiner shall make photographs of the
24 facilities to document the use or uses of water and the photographs
25 must be submitted with the examiner's report to the department. The
26 department shall specify the format and required content of the reports
27 and may provide a form for that purpose.

28 (4) The department may suspend or revoke a certification based on
29 poor performance, malfeasance, failure to acquire continuing education
30 credits, or excessive complaints from the examiner's customers. The
31 department may require the retesting of an examiner. The department
32 may interview any examiner to determine whether the person is qualified
33 for this work. The department shall spot-check the work of examiners
34 to ensure that the public is being competently served. Any person
35 aggrieved by an order of the department including the granting, denial,
36 revocation, or suspension of a certificate issued by the department
37 under this chapter may appeal pursuant to chapter 43.21B RCW.

1 (5) The decision regarding whether to issue a final water right
2 certificate is solely the responsibility and function of the
3 department.

4 (6) The department shall make its final decision under RCW
5 90.03.330 within sixty days of the date of receipt of the proof of
6 examination from the certified water right examiner, unless otherwise
7 requested by the applicant.

8 (7) Each certified water right examiner must complete eight hours
9 annually of qualifying continuing education in the water resources
10 field. The department shall determine and specify the qualifying
11 continuing education and shall inform examiners of the opportunities.
12 The department shall track whether examiners are current in their
13 continuing education and may suspend the certification of an examiner
14 who has not complied with the continuing education requirement.

15 (8) Each certified water right examiner must be bonded for at least
16 fifty thousand dollars.

17 (9) The department may waive the requirement to secure the services
18 of a certified water right examiner in situations in which the
19 department deems it unnecessary for purposes of issuing a certificate
20 of water right.

21 (10) The department shall establish and collect fees for the
22 examination, certification, and renewal of certification of water right
23 examiners. Revenue collected from these fees must be deposited into
24 the water rights processing account created in section 4 of this act.
25 Pursuant to RCW 43.135.055, the department is authorized to set fees
26 for examination, certification, and renewal of certification for water
27 right examiners.

28 (11) The department may adopt rules appropriate to carry out the
29 purposes of this section.

30 **Sec. 8.** RCW 90.14.065 and 1987 c 93 s 1 are each amended to read
31 as follows:

32 (1)(a) Any person or entity, or successor to such person or entity,
33 having a statement of claim on file with the water rights claims
34 registry (~~(on April 20, 1987,)~~) may submit to the department of ecology
35 for filing(~~(7)~~) an amendment to such a statement of claim if the
36 submitted amendment is based on:

1 ~~((1))~~ (i) An error in estimation of the quantity of the
2 applicant's water claim prescribed in RCW 90.14.051 if the applicant
3 provides reasons for the failure to claim such right in the original
4 claim;

5 ~~((2))~~ (ii) A change in circumstances not foreseeable at the time
6 the original claim was filed, if such change in circumstances relates
7 only to the manner of transportation or diversion of the water and not
8 to the use or quantity of such water; or

9 ~~((3))~~ (iii) The amendment is ministerial in nature.

10 (b) The department shall accept any such submission and file the
11 same in the registry unless the department by written determination
12 concludes that the requirements of (a)(i), (ii), or (iii) of this
13 subsection ~~((1), (2), or (3) of this section))~~ have not been
14 satisfied.

15 (2) In addition to subsection (1) of this section, a surface water
16 right claim may be changed or transferred in the same manner as a
17 permit or certificate under RCW 90.03.380, and a water right claim for
18 groundwater may be changed or transferred as provided under RCW
19 90.03.380 and 90.44.100.

20 (3) Any person aggrieved by a determination of the department may
21 obtain a review thereof by filing a petition for review with the
22 pollution control hearings board within thirty days of the date of the
23 determination by the department. The provisions of RCW 90.14.081 shall
24 apply to any amendment filed or approved under this section.

25 **Sec. 9.** RCW 90.44.100 and 2009 c 183 s 16 are each amended to read
26 as follows:

27 (1) After an application to, and upon the issuance by the
28 department of an amendment to the appropriate permit or certificate of
29 groundwater right, the holder of a valid right to withdraw public
30 groundwaters may, without losing the holder's priority of right,
31 construct wells or other means of withdrawal at a new location in
32 substitution for or in addition to those at the original location, or
33 the holder may change the manner or the place of use of the water.

34 (2) An amendment to construct replacement or a new additional well
35 or wells at a location outside of the location of the original well or
36 wells or to change the manner or place of use of the water shall be
37 issued only after publication of notice of the application and findings

1 as prescribed in the case of an original application. Such amendment
2 shall be issued by the department only on the conditions that: (a) The
3 additional or replacement well or wells shall tap the same body of
4 public groundwater as the original well or wells; (b) where a
5 replacement well or wells is approved, the use of the original well or
6 wells shall be discontinued and the original well or wells shall be
7 properly decommissioned as required under chapter 18.104 RCW; (c) where
8 an additional well or wells is constructed, the original well or wells
9 may continue to be used, but the combined total withdrawal from the
10 original and additional well or wells shall not enlarge the right
11 conveyed by the original permit or certificate; and (d) other existing
12 rights shall not be impaired. The department may specify an approved
13 manner of construction and shall require a showing of compliance with
14 the terms of the amendment, as provided in RCW 90.44.080 in the case of
15 an original permit.

16 (3) The construction of a replacement or new additional well or
17 wells at the location of the original well or wells shall be allowed
18 without application to the department for an amendment. However, the
19 following apply to such a replacement or new additional well: (a) The
20 well shall tap the same body of public groundwater as the original well
21 or wells; (b) if a replacement well is constructed, the use of the
22 original well or wells shall be discontinued and the original well or
23 wells shall be properly decommissioned as required under chapter 18.104
24 RCW; (c) if a new additional well is constructed, the original well or
25 wells may continue to be used, but the combined total withdrawal from
26 the original and additional well or wells shall not enlarge the right
27 conveyed by the original water use permit or certificate; (d) the
28 construction and use of the well shall not interfere with or impair
29 water rights with an earlier date of priority than the water right or
30 rights for the original well or wells; (e) the replacement or
31 additional well shall be located no closer than the original well to a
32 well it might interfere with; (f) the department may specify an
33 approved manner of construction of the well; and (g) the department
34 shall require a showing of compliance with the conditions of this
35 subsection (3).

36 (4) As used in this section, the "location of the original well or
37 wells" of a water right permit or certificate is the area described as
38 the point of withdrawal in the original public notice published for the

1 application for the water right for the well. The location of the
2 original well or wells of a water right claim filed under chapter 90.14
3 RCW is the area located within a one-quarter mile radius of the current
4 well or wells.

5 (5) The development and use of a small irrigation impoundment, as
6 defined in RCW 90.03.370(8), does not constitute a change or amendment
7 for the purposes of this section. The exemption expressly provided by
8 this subsection shall not be construed as requiring an amendment of any
9 existing water right to enable the holder of the right to store water
10 governed by the right.

11 (6) This section does not apply to a water right involved in an
12 approved local water plan created under RCW 90.92.090 or a banked water
13 right under RCW 90.92.070.

14 **Sec. 10.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to read
15 as follows:

16 (1) After an application to, and upon the issuance by the
17 department of an amendment to the appropriate permit or certificate of
18 groundwater right, the holder of a valid right to withdraw public
19 groundwaters may, without losing the holder's priority of right,
20 construct wells or other means of withdrawal at a new location in
21 substitution for or in addition to those at the original location, or
22 the holder may change the manner or the place of use of the water.

23 (2) An amendment to construct replacement or a new additional well
24 or wells at a location outside of the location of the original well or
25 wells or to change the manner or place of use of the water shall be
26 issued only after publication of notice of the application and findings
27 as prescribed in the case of an original application. Such amendment
28 shall be issued by the department only on the conditions that: (a) The
29 additional or replacement well or wells shall tap the same body of
30 public groundwater as the original well or wells; (b) where a
31 replacement well or wells is approved, the use of the original well or
32 wells shall be discontinued and the original well or wells shall be
33 properly decommissioned as required under chapter 18.104 RCW; (c) where
34 an additional well or wells is constructed, the original well or wells
35 may continue to be used, but the combined total withdrawal from the
36 original and additional well or wells shall not enlarge the right
37 conveyed by the original permit or certificate; and (d) other existing

1 rights shall not be impaired. The department may specify an approved
2 manner of construction and shall require a showing of compliance with
3 the terms of the amendment, as provided in RCW 90.44.080 in the case of
4 an original permit.

5 (3) The construction of a replacement or new additional well or
6 wells at the location of the original well or wells shall be allowed
7 without application to the department for an amendment. However, the
8 following apply to such a replacement or new additional well: (a) The
9 well shall tap the same body of public groundwater as the original well
10 or wells; (b) if a replacement well is constructed, the use of the
11 original well or wells shall be discontinued and the original well or
12 wells shall be properly decommissioned as required under chapter 18.104
13 RCW; (c) if a new additional well is constructed, the original well or
14 wells may continue to be used, but the combined total withdrawal from
15 the original and additional well or wells shall not enlarge the right
16 conveyed by the original water use permit or certificate; (d) the
17 construction and use of the well shall not interfere with or impair
18 water rights with an earlier date of priority than the water right or
19 rights for the original well or wells; (e) the replacement or
20 additional well shall be located no closer than the original well to a
21 well it might interfere with; (f) the department may specify an
22 approved manner of construction of the well; and (g) the department
23 shall require a showing of compliance with the conditions of this
24 subsection (3).

25 (4) As used in this section, the "location of the original well or
26 wells" of a water right permit or certificate is the area described as
27 the point of withdrawal in the original public notice published for the
28 application for the water right for the well. The location of the
29 original well or wells of a water right claim filed under chapter 90.14
30 RCW is the area located within a one-quarter mile radius of the current
31 well or wells.

32 (5) The development and use of a small irrigation impoundment, as
33 defined in RCW 90.03.370(8), does not constitute a change or amendment
34 for the purposes of this section. The exemption expressly provided by
35 this subsection shall not be construed as requiring an amendment of any
36 existing water right to enable the holder of the right to store water
37 governed by the right.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.44 RCW
2 to read as follows:

3 Applications to appropriate groundwater under a cost-reimbursement
4 agreement must be processed in accordance with RCW 90.03.265 when an
5 applicant requests the assignment of a cost-reimbursement consultant as
6 provided in RCW 43.21A.690.

7 NEW SECTION. **Sec. 12.** A new section is added to chapter 90.44 RCW
8 to read as follows:

9 (1) The department may expedite processing of applications within
10 the same source of water on its own volition when there is interest
11 from a sufficient number of applicants or upon receipt of written
12 requests from at least ten percent of the applicants within the same
13 source of water.

14 (2) If the conditions of subsection (1) of this section have been
15 met and the department determines that the public interest is best
16 served by expediting applications within a water source, the department
17 must notify in writing all persons who have pending applications on
18 file for a new appropriation, change, transfer, or amendment of a water
19 right from that water source. A water source may include surface water
20 only, groundwater only, or surface and groundwater together if the
21 department determines that they are hydraulically connected. The
22 notice must be posted on the department's web site and published in a
23 newspaper of general circulation in the area where affected properties
24 are located. The notice must also be made individually by way of mail
25 to:

26 (a) Inform those applicants that expedited processing of
27 applications within the described water source is being initiated;

28 (b) Provide to individual applicants the criteria under which the
29 applications will be examined and determined;

30 (c) Provide to individual applicants the estimated cost for having
31 an application processed on an expedited basis;

32 (d) Provide an estimate of how long the expedited process will take
33 before an application is approved or denied; and

34 (e) Provide at least sixty days for the applicants to respond in
35 writing regarding the applicant's decision to participate in expedited
36 processing of their applications.

1 (3) In addition to the application fees provided in RCW 90.03.470,
2 the department must recover the full cost of processing all the
3 applications from applicants who elect to participate within the water
4 source through expedited processing fees. The department must
5 calculate an expedited processing fee based primarily on the
6 proportionate quantity of water requested by each applicant and may
7 adjust the fee if it appears that an application will require a
8 disproportionately greater amount of time and effort to process due to
9 its complexity. Any application fees that were paid by the applicant
10 under RCW 90.03.470 must be credited against the applicant's share of
11 the cost of processing applications under the provisions of this
12 section.

13 (4) The expedited processing fee must be collected by the
14 department prior to the expedited processing of an application.
15 Revenue collected from these fees must be deposited into the water
16 rights processing account created in section 4 of this act. An
17 applicant who has stated in writing that he or she wants his or her
18 application processed using the expedited procedures in this section
19 must transmit the processing fee within sixty days of the written
20 request. Failure to do so will result in the applicant not being
21 included in expedited processing for that water source.

22 (5) If an applicant elects not to participate in expedited
23 processing, the application remains on file with the department, the
24 applicant retains his or her priority date, and the application may be
25 processed through regular processing, expedited processing, coordinated
26 cost-reimbursement processing, cost-reimbursement processing, or
27 through conservancy board processing as authorized under chapter 90.80
28 RCW. Such an application may not be processed through expedited
29 processing within twelve months after the department's issuance of
30 decisions on participating applications at the conclusion of expedited
31 processing unless the applicant agrees to pay the full proportionate
32 share that would otherwise have been paid during such processing. Any
33 proceeds collected from an applicant under this delayed entry into
34 expedited processing shall be used to reimburse the other applicants
35 who participated in the previous expedited processing of applications,
36 provided sufficient proceeds remain to fully cover the department's
37 cost of processing the delayed entry application and the department's

1 estimated administrative costs to reimburse the previously expedited
2 applicants.

3 NEW SECTION. **Sec. 13.** Section 9 of this act expires June 30,
4 2019.

5 NEW SECTION. **Sec. 14.** Section 10 of this act takes effect June
6 30, 2019.

7 NEW SECTION. **Sec. 15.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 16.** It is the intent of the legislature to
12 recover the actual cost of processing applications for water right
13 permits and to stop subsidizing the processing of water right permits
14 out of general tax revenues. The legislature recognizes that the
15 largest beneficiary of receiving a water permit is the person receiving
16 the water permit.

17 It is further the intent of the legislature that the backlog of
18 applications be eliminated within five years of the effective date of
19 this section and that thereafter water right permit applications be
20 processed to a conclusion within twelve months of an application being
21 made to the department of ecology.

22 NEW SECTION. **Sec. 17.** A new section is added to chapter 90.03 RCW
23 to read as follows:

24 The water rights processing and dam safety account is created in
25 the state treasury. All receipts from the fees collected under RCW
26 90.03.470 must be deposited into the account. Moneys in the account
27 may be spent only after appropriation. Expenditures from the account
28 may be used only to support the processing of water right applications
29 and change applications as provided in this chapter and chapters 90.38,
30 90.42, and 90.44 RCW and the safety inspection of hydraulic works and
31 plans and specifications for such works.

1 **Sec. 18.** RCW 90.03.470 and 2005 c 412 s 2 are each amended to read
2 as follows:

3 The fees specified in this section shall be collected by the
4 department in advance of the requested action.

5 ~~(1) ((For the examination of an application for a permit to~~
6 ~~appropriate water, a minimum fee of fifty dollars must be remitted with~~
7 ~~the application.~~

8 ~~For an amount of water exceeding one half cubic foot per second,~~
9 ~~the examination fee shall be assessed at the rate of one dollar per one~~
10 ~~hundredth cubic foot per second. In no case will the examination fee~~
11 ~~be less than fifty dollars or more than twenty five thousand dollars.~~
12 ~~No fee is required under this subsection (1) for an application filed~~
13 ~~by a party to a cost reimbursement agreement made under RCW~~
14 ~~90.03.265.))~~ For the examination of an application for a permit to
15 appropriate water or for an application to change, transfer, or amend
16 an existing water right, an examination fee equal to one hundred
17 dollars for each one-hundredth of a cubic foot per second must be
18 remitted with the application, but in no case may the examination fee
19 be less than one thousand dollars or more than fifty thousand dollars.

20 (2) The following fees apply for the examination of an application
21 to store water((, a fee of two dollars for each acre foot of storage
22 proposed shall be charged, but a minimum fee of fifty dollars must be
23 remitted with the application. In no case will the examination fee for
24 a storage project be less than fifty dollars or more than twenty five
25 thousand dollars. No fee is required under this subsection (2) for an
26 application filed by a party to a cost reimbursement agreement made
27 under RCW 90.03.265)) and for an application to change a storage right:

28 (a) For storage of less than one hundred acre feet of water, an
29 examination fee of one thousand dollars must be remitted with the
30 application.

31 (b) For storage of more than one hundred acre feet of water but
32 less than or equal to one thousand acre feet of water, an examination
33 fee of two thousand dollars must be remitted with the application.

34 (c) For storage of more than one thousand acre feet of water but
35 less than or equal to ten thousand acre feet of water, an examination
36 fee of seven thousand five hundred dollars must be remitted with the
37 application.

1 (d) For storage of more than ten thousand acre feet of water, an
2 examination fee of fifteen thousand dollars must be remitted with the
3 application.

4 ~~(3)(a) ((For the examination of an application to transfer, change,~~
5 ~~or amend a water right certificate, permit, or claim as authorized by~~
6 ~~RCW 90.44.100, 90.44.105, or 90.03.380, a minimum fee of fifty dollars~~
7 ~~must be remitted with the application. For an application for change~~
8 ~~involving an amount of water exceeding one cubic foot per second, the~~
9 ~~total examination fee shall be assessed at the rate of fifty cents per~~
10 ~~one hundredth cubic foot per second. For an application for change of~~
11 ~~a storage water right, the total examination fee shall be assessed at~~
12 ~~the rate of one dollar for each acre foot of water involved in the~~
13 ~~change. The fee shall be based on the amount of water subject to~~
14 ~~change as proposed in the application, not on the total amount of water~~
15 ~~reflected in the water right certificate, permit, or claim. In no case~~
16 ~~will the examination fee charged for a change application be less than~~
17 ~~fifty dollars or more than twelve thousand five hundred dollars.~~

18 ~~(b))~~ The fee paid to the department for an application for change
19 filed with a water conservancy board under chapter 90.80 RCW or for an
20 application for change filed by a party to a cost-reimbursement
21 agreement under RCW 90.03.265 must be one-fifth of the amounts provided
22 in subsections (1) and (2) of this section. A conservancy board may
23 charge its own processing fees in accordance with RCW 90.80.060.

24 (b) The examination fee for a temporary or seasonal change under
25 RCW 90.03.390 is ~~((fifty))~~ two hundred dollars and must be remitted
26 with the application.

27 (c) No fee is required under this subsection (3) for:

28 (i) An application to process a change relating to donation of a
29 trust water right to the state; or

30 (ii) An application to process a change when the department
31 otherwise acquires a trust water right for purposes of improving
32 instream flows or for other public purposes(~~(~~

33 ~~(iii) An application filed with a water conservancy board according~~
34 ~~to chapter 90.80 RCW or for the review of a water conservancy board's~~
35 ~~record of decision submitted to the department according to chapter~~
36 ~~90.80 RCW; or~~

37 ~~(iv) An application filed by a party to a cost-reimbursement~~
38 ~~agreement made under RCW 90.03.265)).~~

1 (d) For a change, transfer, or amendment involving a single project
2 operating under more than one water right, including related secondary
3 diversion rights, or involving the consolidation of multiple water
4 rights, only one examination fee and one certificate fee are required
5 to be paid.

6 ~~(4) ((The fifty-dollar minimum fee payable with the application~~
7 ~~shall be a credit to the total amount whenever the examination fee~~
8 ~~totals more than fifty dollars under the schedule specified in~~
9 ~~subsections (1) through (3) of this section and in such case the~~
10 ~~further fee due shall be the total computed amount, less the amount~~
11 ~~previously paid. Within five working days from receipt of an~~
12 ~~application, the department shall notify the applicant by registered~~
13 ~~mail of any additional fees due under subsections (1) through (3) of~~
14 ~~this section.))~~ (a) The fee amounts specified in this section apply to

15 applications received after the effective date of this section and to
16 all applications that have not been acted on by the department by
17 issuance of a report of examination as of the effective date of this
18 section. For pending applications that were filed prior to the
19 effective date of this section, any fees that were paid under a
20 previous fee schedule must be credited to the amounts required by
21 subsections (1), (2), and (3) of this section. When the department is
22 prepared to take action on an application that was filed prior to the
23 effective date of this section, the department shall notify the
24 applicant that additional fees are due and give the applicant sixty
25 days to remit the additional fees. If the applicant fails to remit the
26 additional fees within the time provided, the department shall cancel
27 the application and inform the applicant of the cancellation.

28 (b) If the department receives a water right, change, transfer,
29 amendment, or storage application that does not include remittance of
30 the fee amounts required by this section, the department shall return
31 the application to the applicant with instructions on the proper fee
32 amount to be remitted. An application does not establish a priority
33 date until the proper fee is remitted.

34 (5) ~~The ((fees specified in subsections (1) through (3) of this~~
35 ~~section do not apply to any filings))~~ fee for filing an emergency
36 withdrawal authorization(~~(s)~~) or temporary drought-related water right
37 change(~~(s)~~) authorized under RCW 43.83B.410 that (~~(are)~~) is received by

1 the department while a drought condition order issued under RCW
2 43.83B.405 is in effect is one hundred dollars.

3 (6) For applying for each extension of time for beginning
4 construction work under a permit to appropriate water, for completion
5 of construction work, or for completing application of water to a
6 beneficial use, a fee of two hundred fifty dollars is required. These
7 fees also apply to similar extensions of time requested under a change
8 or transfer authorization.

9 (7) For the inspection of any hydraulic works to ~~((insure))~~ ensure
10 safety to life and property, a fee based on the actual cost of the
11 inspection, including the expense incident thereto, is required
12 ~~((except as follows: (a) For any hydraulic works less than ten years~~
13 ~~old, that the department examined and approved the construction plans~~
14 ~~and specifications as to its safety when required under RCW 90.03.350,~~
15 ~~there shall be no fee charged; or (b) for any hydraulic works more than~~
16 ~~ten years old, but less than twenty years old, that the department~~
17 ~~examined and approved the construction plans and specifications as to~~
18 ~~its safety when required under RCW 90.03.350, the fee charged shall not~~
19 ~~exceed the fee for a significant hazard dam))~~.

20 (8) For the examination of plans and specifications as to safety of
21 controlling works for storage of ten acre feet or more of water, a
22 minimum fee of ~~((ten))~~ five hundred dollars, or a fee equal to the
23 actual cost, is required.

24 (9) For recording an assignment either of a permit to appropriate
25 water or of an application for such a permit, a fee of ~~((fifty))~~ two
26 hundred dollars is required.

27 (10) For preparing and issuing all water right certificates, a fee
28 of ~~((fifty))~~ two hundred dollars is required.

29 (11) For filing and recording a formal protest against granting any
30 application, a fee of fifty dollars is required. No fee is required to
31 submit a comment, by mail or otherwise, regarding an application.

32 (12) For filing an application to amend a water right claim filed
33 under chapter 90.14 RCW, a fee of ~~((fifty))~~ two hundred dollars is
34 required.

35 For the registration of a new permit exempt groundwater
36 withdrawal as required by RCW 90.44.050, a fee of three hundred dollars
37 must be remitted.

1 (14)(a) Each person who holds a water right permit application, a
2 reservoir permit application, or a change, transfer, or amendment
3 application that is pending at any time between the effective date of
4 this section and June 30, 2011, must remit a one-time fee of two
5 hundred dollars to the department to retain an application in good
6 standing. The department shall provide written notice by certified
7 mail to each holder of an application for the fees that are due under
8 this section. The notice must require that the fees be paid within
9 sixty days of the date of receipt, but in no case may payment be due
10 later than June 30, 2011. For ease of administration, the department
11 may distribute the issuance of the notices by geographic area. The
12 surcharge paid under this subsection is a credit against the
13 application fees required in this section.

14 (b) Applications not in good standing must be canceled. The
15 department shall issue an order to any holder of an application who
16 fails to pay the fee within the prescribed time. The order must state
17 that the application is canceled unless payment is received within
18 thirty days.

19 (c) The department shall advise an applicant and provide an
20 opportunity for an applicant to withdraw their application without
21 further payment of fees if the department determines that the
22 application would not likely be approved. The department shall
23 summarize the basis for its conclusion to the applicant. The
24 department shall further advise that the applicant has the option of
25 providing an amended application that could include storage or other
26 resource management technique that might make it approvable under RCW
27 90.03.255 or 90.44.055. The department's advice is not subject to
28 appeal. If the applicant decides to retain the application on file and
29 pays the fee required in this subsection, the department shall maintain
30 the application in good standing until it is able to render a final
31 decision on the application. The final decision is subject to appeal
32 to the pollution control hearings board as provided under chapter
33 43.21B RCW.

34 (15) An application or request for an action as provided for under
35 this section is incomplete unless accompanied by the fee or the minimum
36 fee. If no fee or an amount less than the minimum fee accompanies an
37 application or other request for an action as provided under this
38 section, the department shall return the application or request to the

1 applicant with advice as to the fee that must be remitted with the
2 application or request for it to be accepted for processing. If
3 additional fees are due, the department shall provide timely
4 notification by certified mail with return receipt requested to the
5 applicant. No action may be taken by the department until the fee is
6 paid in full. Failure to remit fees within sixty days of the
7 department's notification is grounds for rejecting the application or
8 request or canceling the permit. Cash shall not be accepted. Fees
9 must be paid by check or money order and are nonrefundable.

10 ~~((+14+))~~ (16) For purposes of calculating fees for groundwater
11 filings, one cubic foot per second shall be regarded as equivalent to
12 four hundred fifty gallons per minute.

13 ~~((+15) Eighty percent of the fees collected by the department under
14 this section shall be deposited in the state general fund. Twenty
15 percent of the fees collected by the department under this section
16 shall be deposited in the water rights tracking system account
17 established in RCW 90.14.240.~~

18 ~~(+16) Except for the fees relating to the inspection of hydraulic
19 works and the examination of plans and specifications of controlling
20 works provided for in subsections (7) and (8) of this section, nothing
21 in this section is intended to grant authority to the department to
22 amend the fees in this section by adoption of rules or otherwise.))~~

23 (17) The fees collected by the department under this section must be
24 deposited in the water rights processing and dam safety account created
25 in section 17 of this act.

26 (18)(a) The fees specified in this section are effective until the
27 department adopts rules that modify them in accordance with section 21
28 of this act, except that the fees required in subsections (7) and (8)
29 of this section may be modified at any time.

30 (b) When information has been previously obtained that directly
31 relates to the processing of an application in subsections (1) and (2)
32 of this section, the department must proportionately reduce the fees
33 associated with that application as a result of the reduced workload of
34 the department.

35 NEW SECTION. Sec. 19. A new section is added to chapter 90.03 RCW
36 to read as follows:

37 Within existing appropriations, the department must provide grant

1 funds to assist applicants in the payment of fees required in RCW
2 90.03.470. The department shall give priority in the distribution of
3 grant money to applicants who designate on their application that the
4 water will be used for agricultural purposes.

5 **Sec. 20.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to read
6 as follows:

7 (1) After June 6, 1945, no withdrawal of public groundwaters of the
8 state shall be begun, nor shall any well or other works for such
9 withdrawal be constructed, unless an application to appropriate such
10 waters has been made to the department and a permit has been granted by
11 it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public
12 groundwaters for stock-watering purposes, or for the watering of a lawn
13 or of a noncommercial garden not exceeding one-half acre in area, or
14 for single or group domestic uses in an amount not exceeding five
15 thousand gallons a day, or as provided in RCW 90.44.052, or for an
16 industrial purpose in an amount not exceeding five thousand gallons a
17 day, is and shall be exempt from the provisions of this section, but,
18 to the extent that it is regularly used beneficially, shall be entitled
19 to a right equal to that established by a permit issued under the
20 provisions of this chapter: PROVIDED, HOWEVER, That the department
21 from time to time may require the person or agency making any such
22 small withdrawal to furnish information as to the means for and the
23 quantity of that withdrawal: PROVIDED, FURTHER, That at the option of
24 the party making withdrawals of groundwaters of the state not exceeding
25 five thousand gallons per day, applications under this section or
26 declarations under RCW 90.44.090 may be filed and permits and
27 certificates obtained in the same manner and under the same
28 requirements as is in this chapter provided in the case of withdrawals
29 in excess of five thousand gallons a day.

30 (2)(a) The owner of a permit exempt withdrawal established under
31 this section, the beneficial use of which is commenced on or after the
32 effective date of this section, must register the withdrawal with the
33 department on a registration form provided by the department. The
34 registration must include information regarding the ownership and
35 intended purpose of the withdrawal, the amounts withdrawn or proposed
36 to be withdrawn, and the location, size, depth, and other particulars
37 regarding the well. The department shall make the registration form

1 available on its internet site and shall accept the filing of
2 registration forms electronically as well as by conventional mail or
3 personal delivery.

4 (b) For each permit exempt withdrawal the beneficial use of which
5 is commenced on or after the effective date of this section, the
6 registration form must be accompanied by a fee of three hundred
7 dollars. Upon receiving a completed registration form and fee, the
8 department shall make a record of the registration form and shall
9 return a copy of the registration marked as having been received and
10 registered.

11 (c) The well or wells being registered must be tagged in accordance
12 with RCW 18.104.040(6). The department shall provide an identification
13 tag for each well and shall instruct the owner to affix the tags to the
14 wells used to withdraw water.

15 (d) Whenever the owner of a permit exempt withdrawal adds dwelling
16 units or additional purposes for the use of the withdrawal or otherwise
17 increases the amount of water to be withdrawn by more than twenty
18 percent, a new registration form and fee of one hundred dollars must be
19 filed.

20 (e) All fees collected under this section must be deposited into
21 the water rights processing and dam safety account created in section
22 17 of this act.

23 (3) The department may issue either an order under RCW 43.27A.190
24 or a civil penalty under RCW 90.03.600, or both, to the owner of a new
25 permit exempt withdrawal who fails to file the registration form and
26 fee required in subsection (2) of this section. Before issuing an
27 order or penalty, the department shall inform the owner in writing by
28 registered mail with return receipt that the registration form and fee
29 must be remitted within thirty days. An order issued under this
30 subsection may require the owner to cease withdrawing and using water
31 until the form and fee have been filed. If the owner continues to
32 refuse to file the form and fee, the department may issue an order
33 requiring that the subject well or wells be decommissioned.

34 (4) A permit exempt withdrawal, the beneficial use of which is
35 commenced on or after the effective date of this section, that has not
36 been registered shall not be recognized as a water right under a
37 general adjudication of water rights held under chapter 90.03 RCW.

1 NEW SECTION. **Sec. 21.** A new section is added to chapter 90.03 RCW
2 to read as follows:

3 To effectuate the purpose of fully recovering the direct
4 administrative costs incurred by the state to process water right and
5 storage applications under this chapter and RCW 90.44.050 and to
6 inspect and approve hydraulic works under this chapter, the department
7 may periodically adopt rules to adjust the fees established in RCW
8 90.03.470. Any subsequent fees adopted by rule supersede those
9 provided in RCW 90.03.470. Before proposing to adopt any changes to
10 the fees, the department shall consult with the policy committees of
11 the legislature that review water resources legislation.

12 NEW SECTION. **Sec. 22.** A new section is added to chapter 90.03 RCW
13 to read as follows:

14 (1) The department shall submit a report to the legislature prior
15 to December 31, 2012, and biennially thereafter until December 31,
16 2020, on the status of the backlog of applications for water right
17 permits, the effectiveness of processing water right permit
18 applications to a conclusion within twelve months, and the
19 appropriateness of the fee amounts.

20 (2) This section expires January 1, 2021.

21 NEW SECTION. **Sec. 23.** A new section is added to chapter 90.44 RCW
22 to read as follows:

23 (1) The department may not require withdrawals of groundwater to be
24 metered or measured for wells authorized under the provisions of RCW
25 90.44.050 constructed prior to the effective date of this section for
26 single or group domestic uses that do not exceed withdrawing five
27 thousand gallons a day.

28 (2) This section does not apply to wells the department has
29 required to be metered or measured as of the effective date of this
30 section."

31 Correct the title.

--- END ---